

REMARKS

Claims 21 and 22 are herein added. Claims 1-22 will be pending upon entry of this amendment.

This letter is responsive to the Office action dated October 5, 2004.

Objection to Information Disclosure Statement

Examiner has objected to the information disclosure statement filed January 9, 2004 as failing to comply with 37 C.F.R. 1.98(a)(2).

Assuming the Examiner objects to applicant's failure to send copies of the U.S. patents cited in the disclosure, applicant notes that such requirement is waived under an OG Notice for applications filed after July 1, 2003. The present application was filed October 14, 2003.

In view of the foregoing, applicant respectfully requests the Examiner withdrawal his objection and enter and consider the disclosure statement and the references cited therein.

If the Examiner still objects to the information disclosure statement, applicant respectfully requests that the Examiner telephone the undersigned at (314)231-5400.

Claim Rejections - 35 USC §102

Applicant respectfully disagrees with Examiner's rejections of claims 1-2, 4-8 and 10-20 as being anticipated by U.S. Patent No. 5,025,476 (Gould et al.). Reconsideration of the rejections is respectfully requested.

Claim 1

Claim 1 is directed to a system for measuring the size of a foot, the measuring system comprising:  
a support surface having an opening therein;

a fixture positioned over the opening having a cavity suitable for receiving a foot to be measured; and

an imaging device positioned relative to said opening to produce an image of a bottom surface of the foot superimposed on foot measuring indicia visually indicative of foot size.

The foot measuring system of claim 1 allows a user to quickly and easily ascertain the size of a foot. In particular, the imaging device specified in the claim produces an image of a bottom surface of the foot superimposed on foot measuring indicia that is visually indicative of foot size. For example, in the embodiment shown in Fig. 5 of the application, the indicia is a scale marked to show foot size. In use, one simply looks at the image of a foot superimposed on the scale and reads the foot size directly off the scale. A child can do it. There is no need for a complex computer analysis of the image to determine the foot size.

As amended, claim 1 is clearly patentable over the prior art references of record, including Gould et al. Whether considered alone or in combination, the references fail to show or suggest a measuring system comprising an imaging device positioned relative to an opening to produce an image of a bottom surface of a foot superimposed on foot measuring indicia visually indicative of foot size.

Gould et al. disclose a system and method for measuring foot shapes using a light beam 38 from a light source 28, a grating 41 on a support plate 16, a camera 46, and a computer for analysis. As the light beam passes through the opaque grating lines, a series of shadow lines are projected onto the underside of the foot creating a moire fringe pattern. Column 4, lines 46-48. "[T]he image seen by camera 46 has the appearance of a topographic map of the foot with the topographic fringe lines appearing wherever the foot is elevated above the surface of the

support plate...." Column 5, lines 42-47. The image captured by the camera contains the topographically encoded height and shape information carried by the moire fringes, which information may be determined by computerized analysis of the image. Column 6, lines 41-45. Figure 5 shows the image of a foot as it appears to the camera 46. Column 5, lines 48 and 49. After the image is captured, an image analyzer (e.g., a computer) using different edge enhancement technologies, such as Fast Fourier Transform filtering, Roberts convolution and Sobel convolution, and a calculating means (e.g., a computer) are used to determine the length of the foot.

Clearly, therefore, Gould et al. fail to show or suggest a foot measuring system that has an imaging device that produces an image of a bottom surface of a foot superimposed on foot measuring indicia visually indicative of foot size. In this regard, it must be emphasized that the grating 41 is not foot measuring indicia visually indicative of foot size. Nowhere in the reference do Gould et al. disclose the grating 41 as having foot measuring indicia visually indicative of foot size. Rather, the grating 41 is merely used to produce a "topographic map of the foot with the topographical fringe lines". Figure 5 is described as showing the image of a foot produced by the grating as it appears to the camera 46, and yet Figure 5 clearly does not show the foot superimposed on foot measuring indicia visually indicative of foot size. A user clearly cannot visually determine foot size by merely looking at the image of Figure 5. On the contrary, to determine foot size the image of Fig. 5 must be subjected to a complex analytical process involving the use of an image analyzer, mathematical functions, and a computing means. This process is completely different from applicant's claimed invention, as described above.

For the reasons stated above, claim 1 is submitted as being unanticipated by and patentable over the references of record.

Claims 2 and 4-8

Claims 2 and 4-8 depend directly or indirectly from claim 1 and are submitted as patentable for the same reasons as claim 1.

Further, claim 2 specifies that the fixture of claim 1 is shaped like a shoe. Gould et al. fail to teach this feature. The shield 20 shown in Fig. 2 of Gould et al. is simply a sheet of material with slits, as illustrated best in Fig. 3. The shield is not shaped like a shoe. Accordingly, claim 2 is not anticipated by Gould et al. for this additional reason.

As amended, claim 5 specifies that the foot measuring indicia comprises a scale indicating foot size imprinted on the window of claim 4. Gould et al. do not teach any such scale. Accordingly, claim 5 is not anticipated by Gould et al. for this additional reason.

Claim 6 specifies that the imaging device is an optical scanner configured to produce the image by scanning the foot through the opening. Gould et al. is also devoid of any teaching of this feature. In Gould et al. a computer scans the image of the foot to determine foot characteristics, but a scanner is not used to produce (create) the image in the first place, as specified in claim 6. Accordingly, claim 6 is not anticipated by Gould et al. for this additional reason.

Claim 7 depends from claim 6 and specifies the image is a scanned image of the bottom surface of the foot and the foot measuring indicia. As noted above in regard to claims 1 and 6, Gould et al. fail to teach any foot measuring indicia providing a visual indication foot size, much less a scanned image which shows both the bottom surface of the foot and the foot measuring indicia.

Claim 8 further specifies applicant's system as comprising an actuator on a raised platform for operating the imaging device. This feature is convenient because it allows the person having his or her foot measured to start the process simply by

using an actuator located on the platform on which he/she is standing. While Gould et al. shows a raised platform, the patent does not show or suggest an actuator on the platform. The patent simply states that "Once the patient's feet are in position, the operator activates a switch or presses a button on a keyboard (not shown) which signals the computer to capture the image displayed on the monitor." (Emphasis supplied.) (Column 6, lines 38-41.) Since the person doing the activating is an operator using a keyboard, for example, and not the patient, it would appear that the "actuator" in Gould et al. is at a location remote from the raised platform. Accordingly, claim 8 is not anticipated by Gould et al. for this additional reason.

Claim 10 specifies that applicant's imaging device is operable to print the image of claim 1, i.e., an image of the foot superimposed on foot measuring indicia visually indicative of foot size. Gould et al. fail to teach an imaging device capable of printing such an image. The image being referred to here is not just the image of a foot, but the image of a foot superimposed on the claimed foot measuring indicia. Accordingly, claim 10 is not anticipated by Gould et al. for this additional reason.

#### Claims 11-20

Claim 11 is an independent claim specifying the steps of:

- (i) placing the foot of a person into a fixture over a transparent window;
- (ii) scanning a bottom surface of the foot through the window to produce an image of the foot superimposed on foot measuring indicia visually indicative of foot size; and
- (iii) displaying said image.

As explained above in regard to claim 1, the Gould et al. reference does not show or suggest a method involving the step of

producing the claimed image, that is, an image not only of a foot, but of a foot which is superimposed on foot measuring indicia visually indicative of foot size. Further, there is no teaching in Gould et al. of scanning the bottom surface of the foot through a window to produce such an image. As discussed above in regard to claim 6, Gould et al. merely discloses using a computer to scan an image of a foot to determine foot characteristics. There is no disclosure of using a scanner to produce (create) the image in the first place, as specified in claim 11. Also, Gould et al. fails to show the step of displaying such an image.

Accordingly, it is submitted that claim 11 is not anticipated by Gould et al.

Claims 12-14 depend from claim 11 and are submitted as allowable for the same reasons as claim 11.

Further, claim 12 specifies that the foot measuring indicia comprises a scale indicating foot size marked on the window. This claim parallels claim 5 discussed above and is believed to be allowable for the same additional reasons recited in regard to that claim.

Claim 13 further specifies the step of printing the image. Gould et al. fails to teach the step of printing any such image, i.e., an image not only of the foot but of the foot superimposed on the claimed indicia providing a visual indication of foot size. Accordingly, claim 13 is believed to be allowable for this additional reason.

Claim 14 further specifies that the fixture into which the foot is placed is shaped like a shoe. As explained above in regard to claim 2, the shield 20 shown in Gould et al. is not shaped like a shoe, so that claim 14 is not anticipated for this additional reason.

Claim 15, an independent claim, specifies a method including the steps of:

- (i) placing the foot of a person into a fixture over a transparent window;
- (ii) scanning a bottom surface of the foot through the window to produce an image of the foot superimposed on foot measuring indicia visually indicative of foot size;
- (iii) printing said image; and
- (iv) using the image to select a properly sized pair of shoes.

Gould et al. does not anticipate the method of claim 15 for many of the same reasons already discussed in regard to claims 1 and 11. In particular, Gould et al. fails to teach scanning step (ii) set forth above, or the printing step (iii) set forth above, noting that Gould's topographical image of the foot is not scanned or printed to be superimposed on applicant's claimed foot measuring indicia visually indicative of foot size.

Accordingly, claim 15 and claims 16-18 depending therefrom are believed to be patentable over Gould et al. and the other references of record.

Further, claims 16-18 are directed to subject matter previously discussed in regard to claims 12-14, and claims 16-18 are submitted as patentable for the same additional reasons as those claims.

Claim 19 specifies:

- (i) a platform comprising a support surface having an opening therein:
- (ii) an imaging device positioned relative to said opening to produce an image of a bottom surface of the foot superimposed on foot measuring indicia visually indicative of foot size; and
- (iii) an actuator on the platform for operating the imaging device.

Claim 19 is unanticipated by and patentable over the prior art references of record, and in particular Gould et al., for the same reasons discussed above in regard to claim 1. Further, Gould et al. fails to teach an actuator "on the platform" for operating the imaging device, as explained above in regard to claim 8.

Claim 20 depends from claim 19 and is believed to be allowable for the same reasons as claim 19. In addition, the claim is amended to specify that the foot measuring indicia comprises a scale indicating foot size marked on the window. Gould et al. and the other prior art of record fail to show this feature.

Claim Rejections - 35 USC §103

Applicant respectfully disagrees with Examiner's rejections of claims 3 and 9 as being obvious in view of Gould et al. in combination with U.S. Des. 329,322 (Wartell) and U.S. Patent No. 4,064,641 (Levine). Reconsideration of the rejections is respectfully requested.

Claims 3 and 9

Claims 3 and 9 depend either directly or indirectly from claim 1 and are patentable over Gould et al. in combination with Wartell and Levine for the same reasons as claim 1.

Applicant further notes that Wartell and Levine disclose footwear, not "a fixture" for use in measuring a foot. There is absolutely no motivation for using the teachings of these references, relating to the design of footwear, to modify the shield 20 of Gould et al. to have the appearance of a shoe, other than the improper hindsight use of applicant's own disclosure.



New claims 21 and 22

New claim 21 depends from claim 1 and further recites that the foot measuring indicia is a scale marked to indicate foot size.

In addition to being patentable over the references of record by virtue of it depending directly from claim 1, claim 21 is unanticipated by and patentable over the references of record, and in particular Gould et al., in that whether considered alone or in combination, the references further fail to show or suggest a scale marked (e.g., with numbers) to indicate foot size. It will be noted in this regard that nothing disclosed by Gould et al. shows or suggests that the grating 41 is a scale marked to indicate foot size. In fact, as disclosed in Gould et al., the grate is simply a device for creating an image of a foot which must then be subjected to computer imaging and analysis to determine foot size.

For the reasons stated above, new claim 21 is submitted as patentable over the references of record.

Claim 22 depends from claim 21 and further specifies that the scale includes numbers corresponding to different foot sizes. This claim is also believed be allowable over the prior art of record.

Conclusion

In view of the foregoing, favorable consideration of claims 1-22 is respectfully requested.

A check in the amount of \$50.00 is enclosed in payment of the fee for added claims.

The Commissioner is hereby authorized to charge any deficiency or overpayment of the required fee to Deposit Account No. 19-1345.

Respectfully submitted,



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